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SUBJECT: TUNIS AMERICAN SCHOOL FACES TAX CRISIS, STATUS QUESTIONS

REF: A. TUNIS 0001
¶B. 08 TUNIS 1135
¶C. CIRCULAR 175

¶1. (SBU) SUMMARY AND ACTION REQUEST: The future of the American Cooperative School of Tunis (ACST) is threatened by a Tunisian tax assessment of US $6.5 million. The assessment flies in the face of 50 years of practice and diplomatic exchanges on the school,s status. A formal bilateral accord is essential to secure the school,s future. In this message, we summarize the school,s situation and Mission actions to address the problem. We appreciate NEA Acting DAS Hudson raising the issue with the Tunisian Charge recently in Washington. We ask that the Department use future opportunities, including the arrival of new Tunisian Ambassador Mansour, to emphasize the importance of a fair and amicable resolution of the ACST tax question and the need for a clear bilateral accord to establish the school,s status once and for all. END SUMMARY AND ACTION REQUEST.

¶2. (U) ACST began, literally, in a basement when a group of parents came together to provide English-language education to American children in 1959. A half-century later, it is a well-established institution offering an accredited Pre-K - Grade 12 American education to over 500 students including Americans (20 percent), Tunisians (10 percent) and children of 67 other nationalities. As the only English-language school in Tunisia, the ACST serves the dependents of many diplomatic missions, international organizations and multinational companies. Notably, dependents of employees of the African Development Bank (AfDB) make up 40 percent of the student body.

¶3. (SBU) Throughout its history, ACST has operated under the auspices of the US Embassy in the eyes of both the Tunisian and American Governments. Putting that general understanding into practice has sometimes been problematic, however, in the absence of any specific bilateral agreement concerning the school, unlike counterpart institutions associated with other diplomatic missions. A 1963 educational and cultural accord, often cited by both sides in diplomatic notes and other correspondence concerning the school, can be interpreted to include the school but is too vague to offer much guidance. Some GOT officials, notably at the Ministry of Finance, say that it does not apply to ACST, even though in writing they refer to it as the basis for many of their past actions, including VAT exoneration as recently as last year.

¶4. (SBU) A call from a local official responsible for private schools led to an October 30 meeting to discuss the school,s status with representatives of the Ministry of Foreign Affairs (MFA) Protocol, Legal and Americas Desks, the Ministry of Finance (MOF) and the Ministry of Education. The school was represented by the Director, Business Manager, and Board President (Embassy Information Officer) accompanied by the DCM. That meeting underscored the murkiness of the

school,s status and Tunisian concern for the implications of that status on the tax obligations of the school and its employees. The meeting also provided the opportunity to highlight previous Embassy efforts to resolve this issue, including a draft bilateral accord submitted in 2001 that went unanswered.

¶5. (SBU) The MFA meeting ended with the Chief of Protocol suggesting a period of reflection before the next of what was sure to be many future discussions. Nevertheless, the next day the school received written notice of a pending fiscal audit by the Ministry of Finance (MOF). Soon thereafter, long-standing armed Tunisian police security details and rush-hour traffic police support at the school were discontinued without explanation. The school attempted to postpone the audit until such time as the school,s status was resolved, but the audit went ahead beginning November 24.

¶6. (SBU) In the meantime, in consultation with the Department, the Embassy dusted off the 2001 draft bilateral accord and submitted an updated and newly-cleared version to the MFA on November 26. The Ambassador and other Embassy officials reached out to Tunisian officials and other diplomatic missions to encourage the Government of Tunisia (GOT) to resolve the school,s status questions quickly and amicably.

¶7. (SBU) The school received the MOF audit report December ¶26. The audit through the 2007 fiscal year determined that the school owed, including penalties, some US $6.5 million (9.1 million Tunisian dinars), or approximately one year,s gross revenue. About half of this total was claimed for withholding taxes from the salaries of overseas-hired (foreign) employees, despite the fact that a specific exoneration from such taxes was referenced in a 1984 diplomatic note. Another approximately US $1 million was claimed for VAT exemptions duly approved by the MFA via the Embassy for the American school (and clearly stated as such) in line with 50 years of past practice. The school admits to some errors and oversights in its withholding from local employee salaries, failure to charge VAT on cafeteria and bus services, and some other taxes totaling approximately US $1 million. However, ACST and the Embassy strongly contest the majority of the audit,s findings as a retroactive reversal of the privileges accorded to the school by the GOT for almost 50 years.

¶8. (SBU) While the school pursued an appeals process in consultation with its legal and financial advisors, the Embassy increased efforts to engage the Tunisian authorities on the issue, including the Ambassador raising the matter with the MFA Chief of Staff on December 30 and with the Minister of Foreign Affairs on January 18. The Ambassador briefed AfDB President Kaberuka on February 6 and the German, British, French and Canadian ambassadors on February 11, asking all of them to raise the issue with the GOT. The AfDB President was particularly concerned given the school,s critical importance to his institution. He has raised the issue with the Minister of Finance and other senior Tunisian government officials. The DCM has also met with the Chief of Protocol. The German Ambassador has indicated he will raise the matter soon, as well. The Mission also raised the issue via diplomatic note on February 12 and the Ambassador did so again in a meeting with the Foreign Minister on February 18.

¶9. (SBU) In late February, at the school,s request, the Ambassador wrote a letter to the Minister of Finance asking that the final decree be postponed to allow the parties time to reach an amicable settlement. Separately, the Ambassador requested a meeting with Minister of Finance, which was held March 3. At the meeting, the Minister restated the MOF position that in the absence of a bilateral agreement the school should be treated and taxed as any other private school in Tunisia. The Ambassador replied that our bilateral educational and cultural agreement did apply, and that the GOT had recognized the school's status in 50 years of diplomatic exchanges and practice. He added, however, that the US believes a clear bilateral accord is needed on the

school to resolve these issues once and for all for the future. The Minister agreed to postpone the final decree and offered for a delegation from the school to meet directly with the Director General of Fiscal Controls to come to an agreement.

¶10. (U) At the March 10 meeting between a delegation from the school and the Director General of Fiscal Controls, it was clear that the tax issue cannot easily be resolved without a clear determination of the school,s status. In the absence of clarification from the MFA or a specific bilateral accord, the MOF is attempting to fit ACST into its existing tax categories, which do not take into account the language of diplomatic notes or 50 years of past practice. The school, for its part, seeks a comprehensive settlement that will serve to clarify its past, present and future status. Both parties agreed that it will be difficult to reach a solution without further guidance, but the MOF noted that the final taxation decree cannot be postponed indefinitely. On March 17, the Embassy transmitted another diplomaic note requesting discussions on an accord to setle the school's status once and for all.

¶11. SBU) COMMENT: ACST will have serious financial problems if it is com
pelled to pay $6.5 million in ack
taxes. It may even be compelled to close it doors. At a minimum, tuition and fees would inrease dramatically and school instruction and services would be curtailed. AfDB President Kaberuka has suggested that the ank, at least, would have great difficulty payin. The closure, or dramatic downsizing, of ACST ould not only be a blow to the US mission but to the America and international communities in Tunsia as well. The Embassy appreciates NEA Acting DS Hudson raising the school issue with the Tunisan Charge in Washington. We ask that the Departent use all available opportunities to continue t press the GOT to resolve the tax issue fairly ad amicably and to negotiate a bilateral accord o ACST. END COMMENT.
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